



POLICE DEPARTMENT CITY OF NEW YORK

March 15, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer David Grieco  
Tax Registry No. 940216  
75 Precinct  
Disciplinary Case No. 2015-13709

Detective Radoslaw Terepka  
Tax Registry No. 926200  
75 Detective Squad  
Disciplinary Case No. 2015-13707

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**Charges and Specifications:**

Disciplinary Case No. 2015-13709

1. Said Police Officer David Grieco, on or about June 1, 2014, at approximately 2240 hours while assigned to the 75<sup>th</sup> Precinct and on duty, [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority.  
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
2. Said Police Officer David Grieco, on or about June 1, 2014, at approximately 2240 hours while assigned to the 75<sup>th</sup> Precinct and on duty, [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said premises without sufficient legal authority.  
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED CONDUCT

Disciplinary Case No. 2015-13707

1. Said Police Officer Radoslaw Terepka, on or about June 11, 2014, at approximately 2354 hours while assigned to the 75<sup>th</sup> precinct and on duty, [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said premises without sufficient legal authority.  
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

2. Said Police Officer Radoslaw Terepka, on or about June 11, 2014, at approximately 2354 hours while assigned to the 75<sup>th</sup> precinct and on duty, [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched said premises without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED  
CONDUCT

**Appearances:**

For CCRB-APU: Raasheja Page, Esq.  
100 Church Street, 10<sup>th</sup> floor  
New York, NY 10007

For the Respondents: Michael Martinez, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

**Hearing Dates:**

February 3 and 4, 2016

**Decision:**

Respondent Grieco: Specification 1: Not Guilty; Specification 2: Not Guilty  
Respondent Terepka: Specification 1: Not Guilty; Specification 2: Guilty

**Trial Commissioner:**

ADCT Jeff S. Adler

## REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on February 3 and 4, 2016. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges.

CCRB called Jacqueline Levy as a witness, and introduced two prior CCRB interviews of Person A. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.



## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find as follows: as to Respondent Grieco, I find him not guilty of each of the two charges against him; as to Respondent Terepka, I find him not guilty of unlawful entry, but guilty of an unlawful search.

## FINDINGS AND ANALYSIS

Each Respondent is charged with unlawfully entering and searching the same premises on different dates: Respondent Grieco entered [REDACTED] on June 1, 2014, while Respondent Terepka entered on June 11. Person A, who rents that location, has an extensive criminal history, including six convictions between 2001 and 2014 for offenses such as felony assault, criminal possession of a controlled substance, criminal possession of a forged instrument, petit larceny, criminal contempt, and reckless endangerment. Person A also has nine traffic infractions. Person A did not appear to testify. Instead, CCRB offered into evidence, through Supervising Investigator Jacqueline Levy, the recordings and accompanying transcripts of two interviews she conducted with Person A (CCRB Exs. 1 and 1A, and 2 and 2A).

Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1<sup>st</sup> Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal listened carefully to the prior recorded statements of the civilian witness and reviewed the accompanying transcripts. Additionally, this tribunal reviewed the



video footage from both incidents (CCRB Ex. 3), taken from multiple cameras Person A installed inside and outside the location.

Inside [REDACTED], there is a garage area at the rear of the location, where Person A stores motorcycles and parts that he works on. Towards the front there is a pool table. (See Resp. Ex. A, a diagram of the interior of the location.) The location is secured from the outside by a garage door and several roll-down gates. (See CCRB Ex. 4 and Resp. Ex. B, photographs of the exterior of the location.) Person A called the location his "clubhouse", and described the interior as including the garage area and also a middle room where he works on motorcycles and also allows people to store their bikes for money. Person A did not claim to live there, and provided a different address as his residence. (CCRB Ex. 1A, p. 2, 3, 11-12)

#### June 1 incident

According to Person A's statement, at about 2230 hours on June 1, he was standing outside in front of the open garage door talking with a woman friend. As an unmarked car pulled up to the curb, Person A backed inside and pressed the button to lower the garage door. A hand reached inside trying to grab him. Person A claimed he didn't know that the occupants of the car were police officers, and thought it might be a stick-up. (CCRB Ex. 1A, p. 3-5)

The video footage shows that Person A looked toward the car as it was pulling up, then backed into the garage. Two officers in uniform emerge from the car and run toward the garage. Given Person A's experience with the criminal justice system, and the way he backed into the garage just as the police arrived, this tribunal does not credit his claim that he did not realize these were police officers approaching him.

After backing inside, Person A ran toward the front of the location to hide. He stated that he saw someone with a flashlight walking inside the garage area toward the front. However, when



that individual encountered Person A's dog, he ran back out of the garage. The video footage confirms Person A's account.

Respondent Grieco testified that he and his partner, Officer Hansen, went to the location after receiving a call from Sergeant Person B regarding a "wanted person." Specifically, the sergeant informed the officers that he had observed Person A about a half hour earlier committing the crime of recklessly riding his motorcycle without a helmet the wrong way up a one-way street, while a female without a helmet rode on the rear of the bike. When Sergeant Person B attempted to detain Person A he fled on the motorcycle. Rather than engage in a dangerous chase, the sergeant let Person A go, and called his team members to alert them to the situation. (Tr. 63-64, 67-68)

Since Respondent knew that Person A often could be found [REDACTED], he and his partner went to the location hoping to arrest him there for reckless endangerment. As they approached [REDACTED] they did see Person A standing outside on the sidewalk. Respondent testified that he ran toward Person A trying to apprehend him, but Person A backed inside the garage and lowered the door. As Officer Hansen held the garage door from completely closing, Respondent went inside in pursuit of Person A. (Tr. 66-68, 75, 77-80) It was very dark and difficult to see, and when Respondent heard a dog barking, he retreated back to the garage door, and he and his partner exited the location. (Tr. 69-70) Officer Hansen wedged an old chair under the garage door to prevent it from closing all the way in case the officers decided to re-enter; however, after consulting with their sergeant, the officers left the location. (Tr. 72)

Respondent's testimony was consistent with the video footage of the incident, and I credit his account of what occurred. Additionally, both Respondents offered into evidence a recording, and accompanying transcript, of the CCRB statement of Sergeant Person B, who was on vacation



at the time of this trial (Resp. Exs. C and D). Sergeant Person B's statement further corroborates Respondent Grieco's description of events, including the sergeant's initial encounter with Person A "maybe 30 minutes" earlier. Specifically, the sergeant stated that he had observed Person A "blow some stop signs", and had seen Person A "driving recklessly at a high rate of speed." There was a girl on the back of the motorcycle with no helmet on. When he attempted to pull the motorcycle over, Person A fled at a high rate of speed. Out of concern for the safety of the girl without a helmet, and the overall dangerous nature of the situation, Sergeant Person B chose not to pursue Person A at that moment. (Resp. Ex. D, p. 7) The sergeant stated that he was familiar with Person A from other cases, including a shooting, and from Person A constantly driving his motorcycle "like a maniac" around the precinct. (Resp. Ex. D, p. 8) A short time later, after receiving a call from his officers that Person A had just avoided apprehension [REDACTED], Sergeant Person B arrived at the location, which he described as a garage or tow yard. (Resp. Ex. D, p. 7, 11) The sergeant went inside an adjacent building to see if he could spot Person A hiding out back, but was unable to locate Person A, and so he and his officers left the area. (Resp. Ex. D, p. 8-9)

At issue is whether Respondent Grieco's entry inside constituted misconduct, and whether he conducted an improper search while inside. As counsel for CCRB suggested in her closing remarks, the question is whether Respondent acted reasonably under the circumstances he encountered. I find that he did.

Guidance for what constitutes reasonable police conduct in this situation can be found in the Fourth Amendment. It is a basic principle of Fourth Amendment law that entry into a home without a warrant is presumptively unreasonable. In this case, the premises in question was not Person A's home, but rather more commercial in nature, as Person A made money off of motorcycles that he worked on and allowed to be stored there. The expectation of privacy for commercial



premises is less than that for an individual's home. See *New York v. Burger*, 482 U.S. 691 (1987), citing *Donovan v. Dewey*, 452 U.S. 594 (1981) (the expectation of privacy in commercial property differs significantly from the sanctity accorded an individual's home). Nevertheless, given Person A's obvious efforts to maintain privacy at the location, with several roll-down gates and security cameras, Person A did have an expectation of privacy in these premises. See *People v. Perez*, 266 A.D.2d 242 (2<sup>nd</sup> Dept. 1999) (expectation of privacy found for commercial premises used for automobile repair work).

This rule against warrantless entry is subject only to a few specifically established exceptions. One such exception recognized by the courts is where police are in "hot pursuit" of a suspect. It is well-settled that "a suspect may not defeat an arrest which has been set in motion in a public place ... by the expedient of escaping to a private place." *United States v. Santana*, 427 U.S. 38 (1976) This rule applies even where the crime for which the suspect is being arrested occurred in the past. See *People v. Nieves*, 183 A.D.2d 854 (2<sup>nd</sup> Dept. 1992); *People v. Jacobo*, 208 A.D. 2d 432 (1<sup>st</sup> Dept. 1994) The "hot pursuit" exception has been recognized in a situation where, like here, police are seeking to arrest a suspect for reckless driving. See *People v. Watson*, 115 A.D.2d 687 (2<sup>nd</sup> Dept. 2014)

Here, Respondent, relying on information provided by his fellow officer, had probable cause to arrest Person A for reckless endangerment. See *People v. Petralia*, 62 NY2d 47 (1984). It is clear from the video that when Respondent attempted to apprehend Person A outside the premises, Person A retreated inside in an effort to avoid apprehension. (CCRB Ex. 3, at 10:39:50 mark) Under these circumstances, it was not unreasonable for Respondent to pursue Person A inside in an attempt to take the suspect into custody. Accordingly, I find Respondent Grieco not guilty of Specification 1.



Similarly, Respondent acted reasonably during his extremely brief time inside the premises. Respondent testified credibly that while inside, he looked only for Person A, and conducted no other search. (Tr. 74) Under the circumstances, Respondent's time inside the premises was minimally intrusive. Indeed, the video footage confirms that Respondent spent just about one minute inside the location, and does not show him doing anything that would constitute an unreasonable search of the premises. Since Respondent had a reasonable basis for pursuing Person A inside the location, and the officer did nothing other than try to apprehend the suspect, I find Respondent Grieco not guilty of Specification 2.

June 11 incident

In his second statement, Person A described the events of June 11. Person A stated that at about 2358 hours, he was inside the rear of the location with a friend working on a motorcycle. Person A sent the friend out to get gas, but as the friend was preparing to leave he saw police outside the door and backed inside. The friend went to the back and informed Person A of the police presence, and Person A walked toward the front to investigate. Person A stated that he saw an officer inside, and that the officer (*not* Respondent Terepka) pointed a gun in his direction and ordered Person A to come here. Instead, Person A retreated to the rear and called 911 to complain about the police presence. Person A then left the location through another exit, before Respondent Terepka and other additional officers had even arrived. (CCRB Ex. 2A, p. 3, 6, 12)

The video footage essentially confirms Person A's description of events. Footage from one camera (channel 1) shows Person A in the rear working on a motorcycle, as another male, presumably his friend, walks away from him toward the front. Person A then walks toward the front as well, before hurrying back toward a side door a minute later. Person A appears to have a phone in



his hand, though there is no footage of him actually speaking into it. Footage from another camera at the front of the location (channel 5) shows the friend walk to the door as if to exit, then back away as two officers enter the location. (11:53:48) One of the officers briefly points a gun toward the back. The two officers remain in the front, near a pool table, until Respondent Terepka and other officers can be seen arriving about three minutes later. (11:56:35) Respondent is seen looking around the front area of the location, then pulling his weapon and taking a step toward the rear, before returning back to the front within a few seconds. Respondent continues looking around the front area, and at 11:58:16 appears to reach his hand briefly into open cabinet slots. Respondent is seen exiting at 11:59:00, and the remaining officers depart abruptly at 12:17:40.

Respondent Terepka testified, and provided further clarification of what can be seen in the video. Respondent explained that he responded to an urgent request for assistance at the location from Officer Pralgo. (Tr. 92-93) Upon arrival, Respondent observed the officers already inside, and learned that they were investigating a possible break-in at the location since an individual had run inside when confronted by police. (Tr.95, 117) Respondent began to look around. He checked the camera monitors to the side to see if he could spot the suspect, but was unsuccessful. Respondent took his gun out and took a few steps forward to try to expand the search, but it was extremely dark and he heard a dog barking loudly, so he retreated to the front. (Tr. 97, 110) Respondent continued conducting a "plain view look around" for possible evidence tossed or dropped by the suspect. (Tr. 101) Respondent insisted that he was careful not to move or touch anything, and was only looking. (Tr. 102) When confronted with the video footage that appeared to show him reaching into the spaces in the cabinet at 11:58:16, he maintained that he placed his hand close, but did not recall putting his hand inside the spaces.



(Tr. 114, 116) Respondent then left the location to call his supervisor, Sergeant Person B for further guidance. Before the sergeant could arrive at the scene, he became involved in another incident involving a gun and called the officers to come assist him, which they did. (Tr. 98-99) In his recorded statement, the sergeant confirmed Respondent's account, including how the sergeant received a call from the officers regarding a possible burglary at the location, and how on his way over there he became involved in an unrelated arrest situation for which he requested back-up assistance. (Resp. Ex. C, p. 16, 18)

At issue is whether Respondent Terepka's entry into the location constituted misconduct, and whether he conducted an improper search while inside. Again, the question is whether Respondent acted reasonably under the circumstances he encountered. I find that Respondent Terepka's entry was reasonable, but his search was not.

As was the case with the June 1 incident, Respondent's initial conduct was in reliance on information provided by his fellow officer. In this case, Respondent Terepka responded to the scene only after receiving a call for assistance from Officer Pralgo. Upon Respondent's arrival, Officer Pralgo already was inside the location, and it was reasonable for Respondent to join him inside to provide assistance. Once inside, Respondent received further information from his fellow officers about the suspected burglary. Under the totality of these circumstances, Respondent Terepka's entry into the location was not unreasonable, and I find him not guilty of Specification 1.

However, even though Respondent had a reasonable basis for being inside the location, the circumstances did not provide a basis for him to conduct a search for evidence. As discussed above in connection with the June 1 incident, Person A had some expectation of privacy inside the premises. It is undisputed that the officers did not have a warrant to search for items inside the



location. Although the courts have recognized a "plain view exception" for the recovery of objects plainly visible in an area where the officer has a right to be present (see *NYPD Legal Bulletin*, Vol. 17, No. 6 (June 12, 1987)), the theory justifying this exception cannot be extended to concealed items which are readily discoverable only through touch. See *People v. Diaz*, 81 NY2d 106 (1993). As such, the act of reaching with one's hand into a partially enclosed compartment constitutes a search for 4<sup>th</sup> Amendment purposes.

On the one hand, Respondent Terepka came across as conscientious in describing his efforts to restrict his activity to a permissible "plain view" search, and for the most part the video supports his stated intention. Nevertheless, after reviewing the video footage, this tribunal is persuaded that Respondent did reach his hand, more than once, into the partially enclosed compartments of the cabinet in a manner that suggests he was searching for evidence that was not in plain view. Since this conduct was not reasonable under the circumstances, I find Respondent Terepka guilty of Specification 2.

### PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent Terepka's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Terepka was appointed on March 1, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB recommended that Respondent Terepka forfeit eight (8) vacation days. However, Respondent has been found guilty of only one of the two charges, and this recommendation is excessive. Respondent has a strong record with the Department, having risen to the rank of detective straight from the Anti-Crime Unit. He came across as professional and conscientious



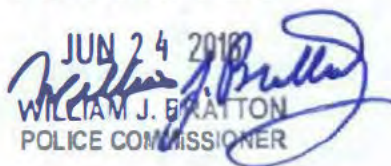
on the witness stand. His explanation that he was trying to do a thorough assessment of the location in case there was any follow-up police work that needed to be done seemed genuine. Although this tribunal has found that Respondent went too far by conducting a search, it is important to keep in mind how minimally intrusive that search was before crafting an appropriate penalty. Taking into account the surrounding circumstances, the nature of the search, and Respondent's dedicated service to the Department, this tribunal recommends that Respondent Terepka receive a reprimand.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials

**APPROVED**

JUN 24 2018  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE RADOSLAW TEREPA  
TAX REGISTRY NO. 926200  
DISCIPLINARY CASE NO. 2015-13707

Respondent was appointed to the Department on March 1, 2000. His last three evaluations were a 3.5 overall rating of "Highly Competent/Competent" in 2015 and a 4.5 rating of "Extremely Competent/Highly Competent" in 2013 and 2014. He has ten medals for Excellent Police Duty and five medals for Meritorious Police Duty, as well as an Honorable Mention and a Combat Cross.

In 2008, Respondent was found Not Guilty of failing to conduct a proper investigation by finalizing a job as "unnecessary" without contacting a supervisor. He has twice been placed on Level 1 Force Monitoring for having three or more CCRB complaints in one year. He was monitored from October 21, 2008 to February 5, 2010 and again beginning on September 12, 2014. The 2014 monitoring remains ongoing.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials